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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/236,897	01/26/1999	AKIHIRO KOMATSU	Q53086	9842

7590 07/31/2002

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WASHINGTON, DC 200373202

EXAMINER
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CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 07/31/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/236,897

Applicant(s)

KOMATSU, AKIHIRO

Examiner

LaToya I. Cross

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

This Office Action is in response to Applicants' amendment filed on May 13, 2002 and entered as Paper No. 12. Claims 1, 2, 4-6 and 8-20 are pending.

#### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Withdrawal of Rejections from Previous Office Action***

- The rejection of claims 1, 2, 4-6, 8 and 9 under 35 USC 103 over Smith et al, Hamblen et al and Bell et al is withdrawn in view of Applicants' amendment to the claims requiring one incubator used for all the analysis elements.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 2, 4-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,296,069 to Smith et al in view of US Patent 5,811,306 to Komatsu and US Patent 5,059,393 to Quenin et al.

Smith et al '069 disclose an apparatus for processing analysis slides in a chemical analyzer. The apparatus comprises a meter device 18 for metering (spotting) sample fluid from sample cups on a sample tray onto an analysis slide of the colorimetric type. A second meter

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device is provided to deposit sample and reference fluid onto analysis slides of the potentiometer type (col. 3, lines 40-45). Incubators **22**, **24** are provided to function with analysis means **23**, **25** from measuring a change in the analysis slides as a result of the fluid being deposited thereon (col. 4, lines 40-45). Results from the analysis means **25** may be transmitted to a computer for appropriate calculations of concentration for various samples (col. 7, lines 53-58). Control circuits are provided which include thermistors for controlling the temperature of various heating elements (col. 4, lines 28-37). Also disclosed are housings **14**, **16** where analysis slides are supplied and moved between the incubator **24** and analysis means **25**, via a slide transfer mechanism **128**. The position of the analysis slide is detected by means of an optical sensor (col. 6, lines 33-36). Also taught by Smith et al is the additional use of an ion activity measuring means comprising electrodes selective to ion activity (col. 3, lines 12-15).

Smith fails to teach 1) a single incubator for maintaining a constant temperature for the analysis slides, wherein the incubator may simultaneously maintain different temperatures for different slides and 2) detection of the position of the analysis slides by way of a bar code reader on the slides.

With respect to the use of single incubator, Komatsu '306 teaches a biochemical analysis apparatus similar to that taught by Smith et al '069. The apparatus of Komatsu '306 comprises analysis films (1) which may contain sample liquid and/or reference fluid. Also disclosed is an incubator (12) having a plurality of cells (42) for receiving a plurality of analysis films (1). The analysis films are incubated in the cells 42. Since the wells are individualized, different temperatures may be maintained for different analysis slides. See col. 7, lines 45-62 and col. 8, lines 44-50. It would have been obvious to one of ordinary skill in the art to use the incubator of Komatsu '306 in place of the two incubators of Smith et al '069 to provide a simpler device

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having fewer structures, which will in turn reduce manufacturing costs. The ordinarily skilled artisan would have been able to determine the necessary temperature conditions for analysis and provide heating means to obtain those temperatures.

With respect to the use of a bar code on the analysis slides, Quenin et al '393 teaches an analyzer similar to that of Smith et al and Komatsu where bar codes are disposed on each analysis slide. A bar code reader is provided to determine the kind of slide moving toward the dispensing station and also determine the position of the slide (col. 4). It would have been obvious to one of ordinary skill in the art to use a bar code to determine the position of the slides in Smith et al '069 because this provide a manner of determining other useful information, such as type, about the slide and keeping track, by way of computer data, of the analyses taking place in the automatic system.

### ***Response to Arguments***

4. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to

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37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

LIC

July 26, 2002

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700